

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems)	CC Docket No. 94-102
)	
Small Business Size Standard)	
)	
To: The Wireless Telecommunications Bureau		

COMMENTS

The Rural Cellular Association ("RCA")¹, by its attorneys, respectfully submits these comments in response to the invitation of the Wireless Telecommunications Bureau ("the Bureau")² to comment on the definition of Tier III carriers adopted by the Federal Communications Commission ("FCC" or "Commission") in its Order staying certain wireless Enhanced 911 ("E911") Phase II deployment deadlines for Tier II and Tier III carriers, with conditions.³ In the *E911 Small Carriers Order*, the Commission first of all defined Tier II carriers as non-nationwide carriers that had over 500,000 subscribers as of year-end 2001. Tier III carriers were defined as all other non-

1 RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

2 *Wireless Telecommunications Bureau Seeks Comment on Small Business Size Standard, Public Notice*, CC Docket No. 94-102, DA 02-2560, released October 7, 2002.

3 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order to Stay, released July 26, 2002 ("*E911 Small Carriers Order*").

nationwide carriers. Members of RCA who filed requests relating to the E911 Phase II deadlines set forth in Section 20.18(f) and (g) of the Commission's rules are included in the definition of Tier III carriers. Through these comments RCA supports the Commission's definition of Tier III carriers, but RCA respectfully urges the Commission to explicitly restrict application of the term "Tier III," as well as the definition of a "small business" subsumed by that term, to the proceedings encompassed by the *E911 Small Carriers Order*.

I. Introduction

The FCC has appropriately adopted a two-tiered system of extended compliance dates for petitioning carriers based upon subscriber count. In doing so the Commission has correctly recognized that the resources of urban and regional carriers are greater than those of rural carriers. Implementation of federal mandates in rural environments result in significantly greater burdens on rural carriers. Rural carriers that do not have a large, regional service area cannot spread and recover costs on a per subscriber basis as easily as can their urban or regional counterparts. As a result the burden of mandates falls disproportionately on rural carriers. The Commission's approach in granting extended deadlines differentiated by carrier size is therefore of great assistance to rural carriers, who, as a class, are devoted to maximizing wireless coverage to major traffic arteries and rural population centers that larger carriers find uneconomical to serve.

II. Tier III Carriers Are a Limited Class

Tier III carriers presently consist of a set of 98 Commercial Mobile Radio Service ("CMRS") providers who petitioned the FCC for extensions of time to implement E911 Phase II capabilities. Their names are listed in Appendix A of the *E911 Small Carriers Order*. It is

reasonable for the FCC to have separated these carriers from the twelve named Tier II non-nationwide carriers, who served over 500,000 subscribers as of year-end 2001. RCA concurs with the FCC's selection of number of subscribers as the single, representative factor of demarcation between Tier II and Tier III for purposes of setting Phase II implementation deadlines. RCA urges the Commission to remain flexible to consider other factors in other contexts and proceedings. For example, revenues, geography, penetration rates, physical system characteristics and other differentials may be as useful as number of subscribers in defining classes of carriers for purposes outside the scope of the *E911 Small Carriers Order*. While the break line chosen by the FCC for Tier III carriers is sufficient for the stated purpose of granting Phase II E911 extension requests, "Tier III" should not be permitted to become a pre-defined generic term for small business or small carriers in all regulatory circumstances. Classification of carriers should continue to be tailored to the purpose, after full consideration of the goals and conditions and of the impact on rural carriers.

III. Constricted Definitions Should Be Narrowly Applied to the Intended Purpose

It is within the discretion of the Commission to discern the abilities of certain size carriers to implement technical upgrades. The Commission is justified in recognizing in this proceeding that larger carrier's demands will be among the first met by equipment suppliers, followed by those of mid-sized carriers, and finally those of small carriers. Because of the limited pool of carriers whose extension requests were addressed by the *E911 Small Carriers Order*, the FCC is able in this instance to adopt a bright line distinction between Tier II mid-size and Tier III small size carriers. The Commission should make clear, however, that the specific definition adopted for Tier III is applicable for the single purpose of addressing E911 Phase II implementation, and not for any larger purpose. While the Commission prefers in the E911 Phase II context to narrow the universe of

carriers to which individual waivers are granted, it should likewise guard and protect its adopted definition of Tier III from being appropriated for purposes where factors other than subscriber count are equally or more appropriate.

The Commission acknowledges in the *E911 Small Carriers Order*, at footnote 53, that the Order is not a rulemaking decision, and therefore does not fall within the provisions of the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. §604. Adoption of the Tier III definition is therefore not subject to a full analysis of its implication on the regulation of wireless carriers. It appears that the sole purpose of the Commission's receiving comments herein is to comply with Section 121.902(b) of the regulations of the Small Business Administration. The Tier III definition should not be permitted to become any sort of universal demarcation. If in some future proceeding the Commission is urged to apply the Tier III definition, the Commission should decline to do so without a full analysis as to whether there might be some other factors needed to expand or contract the classification as applied in that context.

Finally, should any change be made to the Tier III category, no carrier presently listed as a Tier III carrier should become excluded from the group. Carriers presently listed as Tier III carriers have already relied on that classification in planning budgets and allocating resources for Phase II implementation. Accordingly, any change in the definition should be limited to *expanding* the carriers to which the Tier III designation applies.

IV. Conclusion

RCA recognizes and appreciates the FCC's action in creating a separate set of E911 Phase II implementation deadlines for the smaller carriers who requested extensions. Assigning the term "Tier III" to those carriers, and distinguishing them from "Tier II" carriers by number of subscribers

is a rational approach. RCA urges the FCC to resist any temptation to continue to apply the Tier III definition to other proceedings or regulations, or suggesting that other government agencies should repeat the definitions outside the context of the *E911 Small Carriers Order*. The FCC's adoption of the Tier III definition should remain limited in scope and narrowly applied as a means of full compliance with SBA regulations. The adoption of the definition of "Tier III" should not become an event that stages the classification of carriers in future regulatory proceedings.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

/s/ David L. Nace

David L. Nace

Pamela L. Gist

Its Attorneys

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 857-3500

November 6, 2002

CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 6th day of November, 2002, sent by hand-delivery, a copy of the foregoing COMMENTS to the following:

Thomas J. Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C252
Washington, D.C. 20554

Barry J. Ohlson, Chief
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C124
Washington, D.C. 20554

Jennifer Tomchin
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-A161
Washington, D.C. 20554

* Qualex International
Portals II
445 12th Street, S.W., CY-B402
Washington, D.C. 20554
qualexint@aol.com

/s/ Loren Costantino
Loren Costantino

*via e-mail